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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 674

VILLAGE OF RIDGEFIELD PARK, *et al.*,
Appellants,

vs.

BERGEN COUNTY BOARD OF TAXATION, *et al.*,
Appellees.

CONSOLIDATED WITH

CHARLES B. BLEASBY, County Treasurer of the County of Bergen,
Appellee,

vs.

HAROLD J. JONES, Collector-Treasurer, *et al.*,
Appellants.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellee, Charles B. Bleasby, County Treasurer of the County of Bergen, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the appeal herein be dismissed or in the alternative that the judgment of the Supreme Court be affirmed on the following grounds:

(a) The appeal does not present a substantial Federal question.

(b) The judgment rests on an adequate non-federal basis.

Question Presented

Is a substantial Federal question presented where the only matter in issue is the amount of a county tax apportionment and neither the power to impose the tax nor the taxability of the property can be challenged?

Statement

This is a direct appeal from the final judgment entered on June 28, 1960, by the Supreme Court of New Jersey reversing and vacating in its entirety a judgment of the Superior Court of New Jersey, Law Division, which had ordered the Appellate County Treasurer to refund $192,912.58 to the Appellant Village of Ridgefield Park, representing its apportioned share of the county tax for the year 1959.

The Appellant, Harold J. Jones, Collector-Treasurer of the Village of Ridgefield Park had collected this county tax from the taxpayers of his municipality, but had been ordered by the governing body of the Village not to forward the moneys so collected to the County Treasurer despite the statutes requiring such payment. N.J.S.A. 54:4-74; N.J.S.A. 54:4-76. The governing body took this action because it had instituted a suit challenging the methods used by the county tax board in apportioning the 1959 county taxes among the various municipalities. The Appellee County Treasurer, then instituted a suit in the Superior Court of New Jersey, Law Division, against Jones and the Village Commissioners in the nature of a mandamus action, to compel payment of the 1959 county taxes. The County Treasurer's motion for Summary Judgment was denied and the Village was granted permission to deposit the tax moneys in dispute with the Clerk of the Superior Court. The County Treasurer petitioned the Supreme Court by a summary order remanded the proceedings to the trial court with leave to the County Treasurer to apply

for an order for the payment of the tax moneys held by the Clerk of the Superior Court. An appropriate order was entered and these tax moneys were paid to the County Treasurer. Thereafter, on April 29, 1960, the Trial Judge entered a judgment (App. A 90a) ordering the County Treasurer to refund the sum of $192,912.58, constituting the entire 1959 apportionment of county taxes, to the Village of Ridgefield Park. The Supreme Court of New Jersey granted certification to review this judgment. On June 28, 1960, by a unanimous vote, it reversed and vacated this judgment in its entirety (App. A 12a), holding that it did not comply with the Court's mandate in the previous appeal before it in which the opinion was handed down on January 25, 1960 (App. A 1a).

ARGUMENT

POINT I

The appeal does not present a substantial federal question.

The original decision of the Supreme Court of New Jersey handed down on January 25, 1960, reaffirmed the well established law in New Jersey that an official collecting taxes due a higher authority had no power to withhold payment. *Tipping* v. *Dougherty*, 11 N. J. Misc. 931 (Sup. Ct. 1933) 169 At. 671. *Booth* v. *Sargeant*, 12 N. J. Misc. 425 (Sup. Ct. 1934) 172 At. 54. *Booth* v. *Parnell*, 12 N. J. Misc. 413 (Sup. Ct. 1934) 172 At. 50. *Herder* v. *Hunterdon*, 36 N. J. L. 363 (Sup. Ct. 1873). *Downes* v. *Town of Boonton*, 99 N. J. L. 40 (Sup. Ct. 1923) 122 At. 721. *Trewin* v. *Shurts*, 74 N. J. L. 200, 202 (Sup. Ct. 1907) 67 At. 984. The moneys collected by the appellant Jones were not municipal moneys. They were 1959 county taxes, and as such furnished his only authority for collecting them in the first instance. Apart from this it has been held many times by the Supreme Court of the United States, under circumstances

somewhat analagous to those in the present case, that one challenging the amount of an assessment must at the outset pay or tender the amount of the disputed tax. *Peoples Nat. Bank* v. *Marye*, 191 U. S. 272, 24 S. Ct. 68, 48 L. Ed. 180. See also footnote.

Here the appellants seek to recover the entire amount of the county taxes apportioned to the Village of Ridgefield Park for the year 1959. This the Supreme Court of New Jersey has twice held they cannot do. In the court's opinion of June 28, 1960, Chief Justice WEINTRAUB said:

> "To recapitulate, the equalization table for 1959 and the apportionment of the county tax for that year could be reviewed as such only in the administrative process; and with respect to a claimed inequity for the year 1959 which was beyond relief by way of administrative review, Ridgefield Park can at most seek a credit against a future apportionment in such amount as it shows to be in excess of the share it would have owed if the statutory provisions had been honored by the local assessors within the county." (Jurisdictional Statement 15a).

The appellants failed to avail themselves of the administrative review provided by Statute to test the validity of the equalization table for 1959 and the county tax for that year. N.J.S.A. 54:2-37 provides in part that:

> "A county equalization table may be reviewed by the board on complaint of any taxing district or taxpayer in the county, or on its own motion, but such review shall not suspend the apportionment of moneys or collection of taxes."

N.J.S.A. 54:2-39 also provides in part that:

> "Any appellant who is dissatisfied with the judgment of the county board of taxation upon his appeal may

appeal from that judgment to the Division of Tax Appeals in the Department of the Treasury by filing a petition of appeal to the division, in manner and form to be by said division prescribed, on or before December 15 following the date fixed for final decisions by the county boards, and the division shall proceed summarily to hear and determine all such appeals and render its judgment thereon as soon as may be."

When and if the Village establishes the amount of the claimed excess (it has not done so yet) the appropriate course, as our Supreme Court has indicated, is for it to seek a credit in another year for the overcharge.

In *Miller* v. *Board of County Commissioners*, 92 Colo. 425, 21 P. 2d 714 (Supreme Court of Colorado 1933), the court considered a statutory provision which directed the County Commissioners to refund an illegal or erroneous county tax "without abatement or discount to the taxpayer". The court held that this provision referred only to the portion of the tax which was based on an excessive assessment. Certiorari was denied by the United States Supreme Court in 290 U. S. 586, 54 S. Ct. 78, 78 L. ed. 518.

Appellants contend in Point I of their argument that the provisions of the New Jersey Statutes pertaining to equalization require a clear and intentional discrimination, but fail to point out the manner in which the statutes operate to bring about or cause any such discrimination. The duties of the officials under these statutes are clear, proper and in accord with recognized tax procedure. See 84 C.J.S. 930 Taxation §493.

Assuming, but not conceding that tax assessors may in some respects or in some instances fail to fulfill their statutory duties, that failure does not render the statute itself unconstitutional. This question was disposed of by

Chief Justice WEINTRAUB in *City of Passaic* v. *Passaic County Bd. of Taxation*, 31 N. J. 413, 419, 157 A. 2d 825 (Supreme Court of New Jersey, 1960).

> "As we have said, the inequality of which the city complains is not the product of the statute. Rather it is the product of the failure of assessors to comply with the legislative mandate. If it be assumed the resulting inequality in operation presents a constitutional problem, it is sufficient to say the appropriate remedy is one addressed to the underlying failure, and that remedy is available, as we have this day held, Village of Ridgefield Park v. Bergen County Board of Taxation, 31 N. J. 420, 157 A. 2d 829 in the form of an action to compel the local assessors to discharge their duties."

Appellants assert at page 19 of their brief that Ridgefield Park was the sole district in Bergen County to assess at undisputed true value. This may be true with respect to real property, but the record does not support the statement with respect to personal property. The Village applied its own yardstick of value to household goods of $100.00 per room, a method which obviously does not develop true value and one which has never received judicial sanction in New Jersey. This has particular relevance in considering the necessity for the Village to first establish its claim of an excessive apportionment before asserting a deprivation of constitutional rights.

The appellants also suggest that the county board should have equalized the personal property assessments. The Supreme Court of New Jersey has held that county boards have neither the duty nor the authority to do this. They are obliged to accept the personal property assessments as submitted by the local assessors. This is not the result of a legislative oversight. Chief Justice WEINTRAUB gave the reasons for it in the *City of Passaic* decision, *Supra* (31 N. J. 413 at page 418) as follows:

"Under existing circumstances, there is nothing arbitrary or invidious in providing for equalization of the aggregates of real property while omitting similar treatment of the aggregates of personal property. The failure of assessors to achieve the legislative goal of assessment at true value has long been notorious. With respect to real property, an equalization technique is feasible since the quantum of real property is readily ascertainable and sales and appraisal data are procurable. Basic information thus existing for an acceptable finding of the average ratio or percentage of true value at which real property is assessed locally, a device could be fashioned to compensate for the assessor's failure and thereby to support the legislative policy of equality. Borough of Carteret v. Division of Tax Appeals, 40 N. J. Super. 439, 465, 123 A. 2d 559 (App. Div. 1956), certif. denied Borough of Sayreville v. Division of Tax Appeals, 22 N. J. 224, 125 A. 2d 235 (1956). On the other hand, comparable information is not readily available to the county board with respect to personalty. The Legislature accordingly limited the equalization process to the area of its usefulness. The problem of equalization of personal property has not gone unnoticed. Ninth Report of the Commission on Tax Policy, p. 111 (1958). The provision for equalization of only the aggregates of real property does not bespeak legislative approval of the assessor's failure to obey its mandate that personal property be assessed at true value. Rather, it is fair to assume, the Legislature has not found an effective antidote within the framework of the existing tax structure.

"What we have just said disposes of any conceivable constitutional objection. The Legislature need not refrain from achieving a measure of equality where it can merely because its technique is not serviceable

throughout the apportionment basis. Absolute equality in taxation is a practical impossibility. Borough of Totowa v. Passaic County Board of Taxation, supra (5 N. J., at page 464, 75 A. 2d at page 879)."

Appellants urge a constitutional interpretation which would give them the right to receive all the benefits of county government without contributing anything to its cost. Moreover, the acceptance of appellants' theory of taxation could effectively destroy government. The enforcement of any constitutional right presupposes the existence of government. It is accordingly the duty of the courts to construe constitutions in such a fashion as to give life to all their provisions and not to sentence them to death. *Behnke* v. *N. J. Highway Authority, et als,* 13 N. J. 14, 26 (1953) 97 A. 2d 647, *City of Witchita Falls* v. *J. J. & M. Taxman Refining Co.,* 74 S. W. 2d 524 (Texas Ct. of C. Appeals, 1934), Cert. denied 296 U. S. 587 (1935), 51 Am. Jur. 666, Taxation §723, 84 C.J.S. 1106, Taxation §561.

It is obvious from a reading of the Jurisdictional Statement that the Village of Ridgefield Park is the real appellant in interest. As a creature of the state it cannot contest the will of its creator. It cannot, therefore, invoke the provisions of the Fourteenth Amendment to the United States Constitution to defeat or delay the payment of the county taxes in issue. N.J.S.A. 54:3-1, *et seq.,* indicate quite clearly that the county tax board in apportioning county taxes is acting as a part of the State's administrative system for collecting taxes. *Williams* v. *Baltimore,* 289 U. S. 36, 53 S. Ct. 431, 77 L. ed. 1015 (1933), *City of Trenton* v. *New Jersey,* 262 U. S. 182, 43 S. Ct. 534, 67 L. ed. 937 (1928).

POINT II

The judgment sought to be reversed rests on an adequate non-federal basis.

The Judgment of June 28, 1960 which the Appellants seek to bring up for review, merely decided that the Trial Judge had not complied with the mandate of the Supreme Court of New Jersey which had issued on the opinion of the Court handed down on January 25, 1960, in the previous appeal, and reported in 31 N. J. 420. That mandate remitted the record to the court below "to be there proceeded with in accordance with the rules and practice relating to that court consistent with the opinion of this court." When the case went back to the Trial Court the jurisdiction restored could not in any way be in derogation of the judgment of the Supreme Court of New Jersey dated January 25, 1960. The opinion of Chief Justice WEINTRAUB, for that court, handed down on June 28, 1960, after reviewing briefly the prior proceedings in the case stated (33 N. J. 262, 265, 163 A. 2d 144): "Clearly the judgment before us does not comply with our mandate."

The judgment of the Supreme Court of New Jersey of January 25, 1960, declaring that the proceedings for the apportionment of the 1959 taxes could not be attacked and that whatever relief the appellants could ultimately be entitled to should relate to future assessments and a future credit, was the law of the case. The Trial Court's exercise of jurisdiction thereafter was accordingly limited. *In Re Plainfield-Union Water Co.*, 14 N. J. 296, 303 (1954) 102 A. 2d 1. It specifically lacked jurisdiction to enter the money judgment of April 29, 1960 which was reversed by the Supreme Court of New Jersey. Appellants could not therefore acquire any rights under the April 29, 1960 judgment which would give rise to any federal question of which the Supreme Court of the United States should take cog-

nizance. *A. M. Klemm & Son* v. *City of Winter Haven*, 192 So. 652, 141 Fla. 60 appeal dismissed, 60 S. Ct. 810, 309 U. S. 638, 84 L. Ed. 993, rehearing denied, 60 S. Ct. 897, 310 U. S. 656, 84 L. Ed. 1420.

CONCLUSION

Appellants are here seeking the intervention of the United States Supreme Court to relieve them of their burden of establishing in the courts of New Jersey, the nature and extent of their claimed right. The reasons set forth above, it is respectfully submitted, demonstrate that this does not present any substantial question for the decision of this Court and that the judgment should be affirmed or the appeal dismissed.

Respectfully submitted,

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